



**BENJAMIN P. MUSTIAN**  
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November 23, 2021

**VIA ELECTRONIC FILING**

Jocelyn G. Boyd, Esquire  
Chief Clerk & Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, South Carolina 29210

Re: Allowable *Ex Parte* Communications Briefing Held on November 19, 2021;  
An Allowable *Ex Parte* Briefing from Duke Energy Carolinas, LLC ("DEC") and  
Duke Energy Progress, LLC ("DEP") (collectively, "Duke Energy") Regarding the  
Joint Petition of DEC and DEP to Request the Commission to Hold a Joint Hearing  
with the North Carolina Utilities Commission to Develop Carbon Plan;  
**Docket No. 2021-349-E**

Dear Ms. Boyd:

Pursuant to the provisions of S.C. Code Ann. § 58-3-260 (2015) and as Executive Director Edwards' designee, I am attaching copies of the certification statements and the sign-in sheets from the November 19, 2021, Allowable *Ex Parte* Communication Briefing ("Briefing") held by Duke Energy regarding the Joint Petition of DEC and DEP to Request the Public Service Commission of South Carolina ("Commission") to Hold a Joint Hearing with the North Carolina Utilities Commission to Develop Carbon Plan ("Petition").

Please find enclosed a copy of the transcript of the briefing and accompanying presentation materials. Any written materials utilized or referenced at the briefing by any of the attendees or Commissioners are provided by those who utilized or referenced them and are included as follows:

Documents Attached:

- 1) Presentation Slides.

Links to items referenced:

- 1) North Carolina House Bill 951, Session Law 2021-165:  
<https://ncleg.gov/Sessions/2021/Bills/House/PDF/H951v6.pdf>

- 2) Duke Energy Carolinas, LLC 2020 Modified Integrated Resource Plan:  
<https://dms.psc.sc.gov/Attachments/Matter/81fe90b2-7966-4435-b14a-6a79549bfa33>
- 3) Duke Energy Progress, LLC 2020 Modified Integrated Resource Plan:  
<https://dms.psc.sc.gov/Attachments/Matter/bee30357-fd82-4851-8bad-5209170f0222>
- 4) Act 62: [https://www.scstatehouse.gov/sess123\\_2019-2020/bills/3659.htm](https://www.scstatehouse.gov/sess123_2019-2020/bills/3659.htm)
- 5) Title 58, Chapter 3 of the South Carolina Code:  
<https://www.scstatehouse.gov/code/t58c003.php>
- 6) Title 58, Chapter 4 of the South Carolina Code:  
<https://www.scstatehouse.gov/code/t58c004.php>
- 7) Title 58, Chapter 27 of the South Carolina Code:  
<https://www.scstatehouse.gov/code/t58c027.php>

It is my understanding that the transcript of the briefing will be posted on your website, and this transcript is incorporated by reference in all certified statements. The transcript is intended to satisfy the summary requirement of S.C. Code Ann. § 58-3-260(C)(6)(a)(ii).

I further understand that two individuals called into the Briefing, but did not identify themselves. Although I understand the Commission Staff attempted to ascertain the names of these two persons, those efforts were unsuccessful, and these two unknown individuals did not provide signed certification statements.

In addition, certain other attendees asserted that the presenters may have violated S.C. Code Ann. § 58-3-260(C)(6)(a)(iii) by requesting or making a recommendation that the Commission take certain actions regarding the Petition. Accordingly, these attendees declined to provide signed statements certifying that the Briefing was held in accordance with the requirements of S.C. Code Ann. § 58-3-260(C)(6).

As indicated in the letter filed in the above-referenced docket by Ms. Edwards on November 22, 2021, ORS has reviewed the pertinent statute and recognizes that it could be interpreted in a manner to prohibit presenters from requesting any commitment regarding any ultimate or penultimate issue and from making any recommendation to the Commission as part of an allowable *ex parte* briefing. ORS believes that the intent of the statute is to prohibit:

- 1) persons from requesting:
  - a. a commitment, predetermination, or prediction of any commissioner's action as to any ultimate or penultimate issue;
  - b. a commission employee's opinion; or
  - c. a commission employee's recommendation;
- 2) a commissioner or commissioner employee from giving any commitment, predetermination, or prediction on any ultimate or penultimate issue as to:

- a. any commission action;
- b. any commission employee opinion; or
- c. any commission employee recommendation.

I have determined, however, that whether or not there was a violation of S.C. Code Ann. § 58-3-260(C)(6)(a)(iii) is a moot issue. Because certain attendees did not file certification statements, I am unable to certify this Briefing as being in compliance with S.C. Code Ann. § 58-3-260(C)(6)(a)(ii) regardless of whether a violation of S.C. Code Ann. § 58-3-260(C)(6)(a)(iii) occurred.

As required by law, please post this letter along with all documents relating to these briefings on your website. Thank you for your assistance.

Sincerely,

*s/Benjamin P. Mustian*

Benjamin P. Mustian

Enclosures

cc: All Parties of Record (via electronic mail)  
David Butler, Esquire (via electronic mail)  
Jo Anne Wessinger-Hill, Esquire (via electronic mail)